THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE DR. JUSTICE G.YETHIRAJULU

WRIT APPEAL NO.1538 OF 2005

(DATED : 31.10.2005)

Between:

Nahar Singh S/o Aho Ram Singh

Occ: Head Constable, GC, CRPF, R.R.District

…Appellant

A n d

1. Union of India rep. by

Inspector General of Police, CRPF, New Delhi.

2. Addl. Deputy Inspector General of Police,

GC, CRPF, R.R.District

…Respondents.

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

Heard Sri Pratap Narayan Sanghi, learned counsel appearing on behalf of the appellant and Sri B.Narayana Reddy. learned Standing Counsel appearing on behalf of the respondents herein.

The appellant herein is the writ petitioner, who aggrieved against the denial of partial relief though substantially the writ was allowed as against the orders of discharge from service, filed this appeal.

Few facts, which are necessary for disposal of this appeal, are that the appellant was initially recruited as a Constable on 4.7.1983. After rendering service for a period of 20 years, as per proceedings dated 30.06.2003, he was asked to take voluntary retirement on the ground that he is medically unfit. Later, he was submitted to the Medical Board on 21.07.2003, wherein the complaint of the appellant was that the said Board did not include a Cardiologist as its member, especially when the complaint was that the appellant is suffering with cardiac problem. A show cause notice was issued on 23.08.2003 to the appellant to explain as to why he should not be declared as medically unfit. To the said show cause notice, the appellant submitted a detailed explanation on 11.10.2003 requesting that he may aptly be examined by a cardiologist and to consider for an alternate employment. However, without properly considering these and other aspects, ultimately, the respondents passed the impugned order dated 16.10.2003 discharging the appellant from service. The said action was challenged by the appellant in the present writ petition on various grounds including competency and correctness of the medical examination done. This Court initially granted interim directions in W.P.M.P.No.28294 of 2003 as per orders dated 27.10.2003 suspending the impugned order as prayed for. Later, on the application filed by the respondents herein seeking to vacate the said orders, a learned single Judge of this Court passed final orders in W.V.M.P.No.4107 of 2003 on 29.12.2003 with a direction that the petitioner is at liberty to have himself examined by a senior member of the faculty of the Cardiology department either in the NIMS or CARE Hospitals, Hyderabad with regard to the status of his cardiac fitness in the context of the certificate by the Medical Board about his cardiac unfitness for continuing employment in the CRPF and with a further direction that on receipt of such certificate, the petitioner is at liberty to submit the same to the respondents in the writ petition, who may then

consider the same and take an appropriate decision.

Thereupon, the appellant submitted himself before the NIMS on 13.01.2004 and before the Medical Board on 31.01.2004. On examining, the Medical Board of NIMS as per report dated 07.02.2004 declared that the appellant is fit. Thereupon, the appellant submitted representation on 26.02.2004 requesting for reinstatement into service. However, once again, the respondents resubmitted the appellant to the Medical Board of NIMS on 20.04.2004. On examining the appellant once again, the said Board declared the appellant as medically fit as per proceedings dated 23.04.2004. Not satisfied thereby, the C.R.P.F Hospital once again sent the appellant for medical test on 19.05.2004 and even the said C.R.P.F Hospital as per proceedings dated 01.07.2004 declared that the appellant is medically fit. Since no action is forthcoming, the appellant filed contempt in C.C.No.1593 of 2004 on 25.11.2004. However, the respondents have reinstated him in to duty on 9.12.2004. With these events both prior to, and after filing of the writ petition challenging the impugned orders of discharge from service on the medical unfitness, the learned single Judge has gone into the respective submissions and allowed the writ petition accepting the said medical reports holding that the action of the respondents is not in accordance with rules and regulations governing the cases of invalidation on medical grounds and set aside the impugned order. However, in regard to the period from 25.01.2004 to 29.12.2004, though the appellant was held to be entitled to the said period to be taken as continuity of service, but denied the monitory benefit for the said period. The learned single Judge has given all other benefits including reimbursement of the amounts spent by the appellant for examination etc.

Having thus heard the learned counsel on either side, the only question, which arises for consideration in this appeal is as to whether the appellant is entitled to the back wages for the period from 25.01.2004 to 29.12.2004?

Admittedly, though there has been a complaint, in regard to the cardiac problem, but, however, the appellant underwent such an ordeal and faced discharge from service as long back as on 16.10.2003 on a report of the Medical Board, which admittedly did not contain Cardiologist as its component. The appellant, ultimately,

had to submit himself for medical examination on almost three occasions and every time he was found to be medically fit. Therefore, it cannot be said that the appellant was really unfit to discharge service or in any way responsible for the action initiated by the respondents. Thus, virtually accepting the appellant's case as to his fitness for discharge of his duties based upon three reports in his favour, and the entire impugned action has been found absolutely baseless, more so, in the absence of any proper examination from a Cardiologist or properly constituted Board with such an expert, the appellant cannot be denied of the incidental benefits, more so, when all other benefits having been given. On the face of such conclusive expert opinion available on record, there is absolutely no justification to blame the appellant or to deny any such incidental benefits.

In the circumstances, we hold that as a consequence of setting aside the order of discharge and reinstatement with grant of almost all the benefits, the appellant would be entitled to back wages. Now that the appellant has already been reinstated, there is no basis for denial of back wages during the period from 25.01.2004 to 29.12.2004, i.e., nearly for a period of one year.

The Writ Appeal is accordingly allowed. The respondents are directed to pay all back wages to which the appellant is entitled to, under law along with all other benefits as already granted by the learned single Judge. No order as to costs.

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B.PRAKASH RAO, J

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DR.G.YETHIRAJULU, J

31st October 2005

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